

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ESTEBAN LEON COLON,

Defendant-Appellant.

---

UNPUBLISHED

September 13, 2005

No. 253623

Oakland Circuit Court

LC No. 1988-085541-FH

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant Esteban Colon appeals as of right his sentence of five to twenty years in prison imposed after his conviction of probation violation. We remand for resentencing in accordance with an updated presentence investigation report. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Colon pleaded guilty of delivery of 50 grams or more but less than 225 grams of cocaine<sup>1</sup> and was sentenced to lifetime probation. Subsequently, he pleaded guilty to three counts of first-degree criminal sexual conduct (CSC I)<sup>2</sup> and three counts of second-degree criminal sexual conduct (CSC II),<sup>3</sup> and was sentenced as a fourth habitual offender<sup>4</sup> to concurrent terms of eighteen years, nine months to forty years' imprisonment for CSC I and ten to thirty years' imprisonment for CSC II.

The trial court found Colon guilty of violating his probation in the instant case, revoked his probation, and sentenced him to ten to twenty years in prison, to be served consecutively to the sentences he was serving at the time. We affirmed Colon's conviction of probation violation but remanded for resentencing under the version of MCL 333.7401(2)(a)(iii) in effect when he

---

<sup>1</sup> MCL 333.7401(2)(a)(iii).

<sup>2</sup> MCL 750.520b(1)(a).

<sup>3</sup> MCL 750.520c(1)(c).

<sup>4</sup> MCL 769.12.

pleaded guilty to the underlying charge.<sup>5</sup> The trial court resentenced Colon to five to twenty years in prison, to be served consecutively to the sentences he was serving for criminal sexual conduct. Colon moved for resentencing on the ground that an updated presentence report had not been prepared for the resentencing hearing. The trial court denied the motion.

## II. Sentencing Challenge

### A. Standard Of Review

Whether reversal is required because the trial court did not obtain an updated PSIR presents a question of law; therefore, our review is de novo.<sup>6</sup>

### B. Updated Sentencing Information Report

Colon argues that he is entitled to a second resentencing because the trial court did not obtain an updated PSIR before resentencing him. When a defendant is to be resentenced for a felony conviction, the sentencing court must obtain an updated PSIR to use in imposing the sentence.<sup>7</sup> A completely new report is not required; a supplemental report is sufficient.<sup>8</sup> The defendant or the prosecutor “may waive the right to a reasonably updated presentence report at resentencing where each believes the previously prepared report is accurate” as long as the prior report is not “manifestly outdated” and the waiver is intelligent, knowing, and voluntary.<sup>9</sup> Further, an updated report may not be necessary if the trial court has no sentencing discretion.

In this case, although Colon waived his right to an updated PSIR at the probation violation hearing, he did not waive this right at his resentencing on remand from this Court. Further, the PSIR in question was prepared in 1988, which makes it manifestly outdated.<sup>10</sup> Accordingly, even if the initial waiver had applied to the second resentencing, it would not have been valid. Because the sentencing court had discretion to depart from the minimum sentence on

---

<sup>5</sup> *People v Colon*, unpublished opinion per curiam of the Court of Appeals, issued September 4, 2003 (Docket No. 239769). On September 7, 1988, the date Colon pleaded guilty, MCL 333.7401(2)(a)(iii) carried a mandatory term of not less than five or more than twenty years in prison. The trial court could depart from the mandated minimum term if it found that substantial and compelling reasons existed to do so. MCL 333.7401(4).

<sup>6</sup> See *People v Walker*, 234 Mich App 299, 302; 593 NW2d 673 (1999); *People v Britt*, 202 Mich App 714, 718; 509 NW2d 914 (1993).

<sup>7</sup> *People v Triplett*, 407 Mich 510, 511, 515; 287 NW2d 165 (1980).

<sup>8</sup> *People v Martinez (After Remand)*, 210 Mich App 199, 202; 532 NW2d 863 (1995).

<sup>9</sup> *People v Hemphill*, 439 Mich 576, 582; 487 NW2d 152 (1992).

<sup>10</sup> See *id.* at 580-581 (citing cases holding that PSIRs several years old are not “reasonably updated,” and PSIRs only a few months old can be inadequate if circumstances have changed or crimes are different).

remand for substantial and compelling reasons,<sup>11</sup> we conclude that this is not among the type of cases in which production of an updated PSIR is unnecessary.

Remanded for resentencing in accordance with an updated PSIR. We do not retain jurisdiction.

/s/ William C. Whitbeck  
/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald

---

<sup>11</sup> MCL 333.7401(2)(a)(iii); MCL 333.7401(4).